THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.3652 OF 2006

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Dated: 27-02-2006

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Between

R. Jagadish Babu,

S/o. R. Laxman Rao,

Occ: Business,

R/o. Flat No.404,

Plot No.152, Bhanu

Residency, Srinagar

Colony, Hyderabad.

...PETITIONER

AND

Hyderabad Urban

Development Authority,

1-8-323, Paigah Palace,

Police Lines, Rasoolpura,

Secunderabad rep. by

its Vice Chairman.

...RESPONDENT

ORDER:

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Petitioner seeks a Writ of Mandamus to declare the action of the respondent in passing the

impugned order dated 18.01.2006 as illegal, arbitrary.

The respondent by impugned order dated 18.01.2006 considered the request of the petitioner dated 19.12.2005 to
re-consider the re-allotment of the cancelled Plot No.76, Nandagiri Hills Layout and rejected the same.

Learned counsel for the petitioner submits that the respondent-HUDA floated tenders for the sale of plots in the Nandagiri Hills Layout in the month of February 2004 and the petitioner having participated in the auction by depositing the EMD of Rs.2,00,000/- on 14.02.2004 as per token No.933 in respect of Plot No.76 admeasuring
575 sq. yards, became the highest bidder for a sum of Rs.23,200/- per sq. yard and Rs.1,33,40,000/- for the plot, which has a rock garden on the Eastern side. He further submits that the petitioner made representations to the respondent stating that the layout shows the rock garden but the same is not developed and pointed out certain inaccuracies printed in the brochure.

It is the case of the petitioner that the Board of the respondent – HUDA vide its resolution No.17 in 190th Authority Meeting held on 02.12.2005 considered the re-allotment of plots in favour of highest bidders in respect Plot Nos.4, 5, 66, 67, 68 and 95 in the auction held in the month of February 2004 and sold the same to the successful bidders. One of such proceedings is dated 31.01.2006 in respect of Plot No.95 re-allotting the same in favour of one Sri G. Mohan Rao and three others. The learned counsel further submits that the petitioner also stands on the same footing as that of G. Mohan Rao in whose favour the proceedings dated 31.01.2006 was issued giving revised demand notice to pay the 1/4th sale consideration + 1% penalty charges with 15 days from the date of the revised notice and simple interest @ 13.5% from the 16th day of the said notice within 45 days, and the same treatment has to be meted out to the petitioner also.

I have considered the contention advanced by the learned counsel for the petitioner that all the bidders who have participated in respect of the auction held by the respondent – HUDA in the month of February 2004 are to be treated as a class and all such persons shall be

treated on par and the respondent cannot discriminate some bidders while considering the cases of other bidders viz. G. Mohan Rao. Even according to the petitioner the bid amount of G. Mohan Rao is Rs.26,200/- per sq. yard whereas the bid amount of the petitioner was only Rs.23,200/- per sq. yard. If the decision of the respondent board is to consider the case of the bidders whose bid was more than Rs.25,000/- per sq. yard, then the said decision to consider the bidders who have offered more than Rs.25,000/- while rejecting the case of the persons who have offered below Rs.25,000/- amounts to discrimination or not is a different matter as admittedly the petitioner has not questioned that prescribing the highest bid as Rs.25,000/- is discriminatory.

The petitioner herein also filed WP.No.3146 of 2006 seeking a Writ of Mandamus with following relief:

a. To declare the action of the respondent in proposing to auction Plot No.76 admeasuring 575 sq. yards of Nandagiri Hills Layout near Jubilee Hills, Hyderabad on 21.01.2006 vide paper notification published in Deccan Chronicle Newspaper dated 29.01.2006 while the application of the petitioner for re-allotment dated 19.12.2005 is pending with the respondent as illegal and arbitrary, discriminatory and contrary to the brochure conditions;

b. To declare the proceedings issued by the respondent in Lr.No.76/NGH/EMC/H/2004 dated 16.12.2004 as illegal, arbitrary, discriminatory and set aside the same; and consequently direct the respondent to re-allot the Plot No.76 admeasuring 575 sq. yards of Nandagiri Hills Layout near Jubilee Hills, Hyderabad in favour of petitioner as was considered to the similarly situated persons by imposing penalty of 1% sale price for revocation of brochure conditions."

The said writ petition was dismissed by this Court by order dated 21.02.2006 on the ground that without questioning the impugned order dated 18.01.2006 the petitioner is not entitled for any relief in the said writ petition. It was also noticed in the said writ petition that the EMD amount of Rs.2,00,000/- was forfeited by proceedings dated 09.03.2004 and the petitioner admittedly has not questioned the forfeiture order dated 09.03.2004. The only claim of the petitioner is that he is entitled for re-allotment of canceled Plot No.76.

A perusal of the terms and conditions for allotment of plot by way of sale on auction-cum-sealed tender basis to be held in the month of February 2004, pursuant to which the petitioner participated in the auction, goes to show that as per clause 5(j)(ii) immediately after the accepted rate of highest bid amount the highest bidder has to pay the Initial Deposit

(1/4th of the sale price) within a week from the date of auction. Admittedly the petitioner has not paid the 1/4th amount of the sale price within one week. If the entire sale consideration is paid within one month no interest is charged but the amount to be paid within two months in one or two lump sum equal installments attracts interest @ 13.5% as per clause 7 of the said conditions. If the highest bidder does not make the initial deposit within the stipulated time, the EMD stands forfeited. In the instant case, the auction was held on 14/15.02.2004 and the petitioner became the highest bidder having deposited Rs.2,00,000/- as EMD vide token No.933 but the initial deposit was not paid as per clause 5(j) of the terms and conditions of the brochure. Hence, the EMD of Rs.2,00,000/- was forfeited as per clause 9(f).

The file produced by the respondent – HUDA further goes to show that the petitioner made a representation on 14.11.2005 that his request for payment of remaining cost of the land on completion of amenities provided by the HUDA brochure in respect of the said plot is pending; the same was examined and rejected by letter dated 16.12.2005. Thereafter, petitioner made another representation dated 19.12.2005, which was also rejected by the impugned letter dated 18.01.2006. Therefore, it may not be correct to state that the petitioner did not receive the said letters, as all the letters have been sent to the same address.

It is the case of the petitioner that he is entitled for revocation of allotment as per clause No.15 of the brochure, which reads as follows:

"**REVOCATION OF CANCELLATION OF THE ALLOTMENT:**

> If the applicant/s submit reason for delay in payment/delay in taking over the possession to the satisfaction of the Vice-Chairman, the Vice-Chairman may revoke the cancellation of allotment imposing a penalty which shall not be less than 1% of the sale price, such revocation is purely at the sole discretion of the Vice-Chairman, HUDA, and only it is in cases where at least 60% payment is already made at the time of cancellation."

It is stated that in the case of G. Mohan Rao, where cancellation was revoked by order dated 31.01.2006 the 60% payment was not already made and therefore, the petitioner is entitled for the same treatment.

Merely because the respondent – HUDA has considered individual cases contrary to its own terms and conditions and has deviated the terms and conditions of the said brochure, I am of the opinion that the petitioner is not entitled for the same relief.

No doubt, the petitioner would have been entitled for the benefit of the terms and conditions of the brochure, had he made at least 60% payment at the time of cancellation. In the instant case, as the petitioner has not made the initial deposit of 1/4th of the sale price and as the EMD itself has been forfeited for non-payment of initial deposit under clause 9(f), the question of revocation of cancellation of the allotment does not arise. Therefore, I am of the opinion that petitioner is not entitled for the benefit of clause 15 of the brochure.

For the aforesaid reasons, I do not see any merits in the writ petition and it is accordingly dismissed.

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V. ESWARAIAH, J

February 27, 2006

DSK